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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,563	07/25/2003	Daniel J. Kessler	109889	9337
25944	7590	12/16/2005		
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320				
			EXAMINER LOCKETT, KIMBERLY R	
			ART UNIT 2837	PAPER NUMBER

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,563

Applicant(s)

KESSLER, DANIEL J.

Examiner

Kim R. Lockett

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/26/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The indicated allowability of claims 1-5, 7, and 8 is withdrawn. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,7, 10, 15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hearfield.

Hearfield discloses the use of a protective instrument cover comprising a front portion that extends over substantially an entire front surface of a stringed instrument body and is between the stringed instrument body and a string of the stringed instrument body; and means for attaching the front portion of the front surface of the stringed instrument body without requiring removal of hardware if the stringed instrument body (see figure 1). The protective front and back cover with stretchable material (11) cover as disclosed by Hear field covers a guitar (column 6, lines 45-50).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hearfield in view of Britto et al.

Hearfield does not disclose the specific use of a spandex material.

Britto discloses the use of a cover for a musical instrument using a spandex material (column 4, lines 24,25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the stretchable cover as disclosed by Hearfield to include the use of a spandex material as disclosed by Britto in order to provide a flexible protective cover for a musical instrument.

5. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hearfield in view of Wise, Jr.

Hearfield does not disclose the use of a neoprene material.

Wise discloses the use of a neoprene material for a musical instrument (column 4, lines 7-8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the stretchable cover as disclosed by Hearfield to include the use of a neoprene material as disclosed by Wise in order to provide cover for a musical instrument with non slip characteristics.

6. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hearfield in view of Toth.

Hearfield does not disclose the specific use of a spandex material.

Toth discloses the use of a cover for a musical instrument using latex material (column 2, lines 20-,22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the stretchable cover as disclosed by Hearfield to include the use of latex as disclosed by Toth in order to provide a protective cover for a musical instrument with sufficient elasticity.

7. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hear field in view of Messina.

Hear field does not disclose the specific use of a zipper.

Messina discloses the use of a cover for a musical instrument with attachment means that includes a zipper (22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the stretchable cover as disclosed by Hear field to include the zipper as disclosed by Messina in order to provide a securing mean for a flexible a musical instrument cover.

Response to Arguments

Applicant's arguments filed 8/29/05 have been fully considered but they are not persuasive. The applicant argues a lack of motivation for combining the references.

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However the cited references are all directed to a cover for a musical instrument, the differences being a variance of stretchable materials. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The Britto patent is used because Britto discloses the use of a specific material to protect a musical instrument. Britto is not cited for structural purposes. The structural elements in the Hearfield reference meet the applicant's structural elements of the applicant's invention with the exception of a zipper. The zipper is clearly disclosed in the musical instrument cover as disclosed by Messina. Even though Hearfield recites leather as being an "ideal material" as the applicant argues, Hearfield does not specifically disclose that his cover can only be made from leather. Furthermore, Hearfield clearly discloses the use of a of a protective instrument cover comprising a front portion that extends over substantially an entire front surface of a stringed instrument body and is between the stringed instrument body and a string of the stringed instrument body; and means for attaching the front portion of the front surface of the stringed instrument body without requiring removal of hardware if the stringed instrument body. The protective front and back cover with stretchable material (11) cover as disclosed by Hear field covers a guitar (column 6, lines 45-50).

Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center at 703-872-9306.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose **telephone number is 800-786-9199**. Assistance is also available on the Internet at www.uspto.gov.

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett whose telephone number is (703) 308-7615, after 2/3/04 my new number will be (571) 272-2067**. The examiner can normally be reached on Tuesday through Friday from 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107.


KIMBERLY LOCKETT
PRIMARY EXAMINER